IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 16046 of 2005(I)

PETITIONER:

VELOM PANCHAYAT SERVICE CO-OPERATIVE
BANK LTD., CHERUPURAM P.O., KAKKATTIL-673 512,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON
SMT.UMA GOPINATH
SRI.DEVIDAS.U.K
SRI.SANDEEP.E.

RESPONDENTS:

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1. THE KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD, REPRESENTED BY ITS SECRETARY,
KALANIVAS, T.C.NO.27/156, CHINMAYA LANE,
NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM-1.

2. THE SECRETARY,
KERALA STATE CO-OPERATIVE EMPLOYEES PENSION BOARD,
KALANIVAS, T.C.NO.27/156, CHINMAYA LANE,
NEAR AYURVEDA COLLEGE, THIRUVANANTHAPURAM-1.

3. SAVITHRI K., W/O.LATE SANKARAKURUP,
MOLLOTH HOUSE, VELOM POST, KAKKATTIL,
KOZHIKODE DISTRICT.

4. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), KOZHIKODE.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR, SC,KSCEPB
SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.T.A.RAJAN
SRI.MATHAI JOSEPH
SRI.LUIZ GODWIN D'COUTH
GOVERNMENT PLEADER P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2006, ALONG WITH WPC NO. 4218 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1- TRUE COPY OF THE SETTLEMENT DATED 13.5.1996 BETWEEN THE BANK AND THE THIRD RESPONDENT.

EXT.P2- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.11655/2001.

EXT.P3- TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED 20.1.2003.

EXT.P4- TRUE COPY OF THE DEMAND NOTICE DATED 28.52001 ISSUED BY THE FIRST RESPONDENT.

EXT.P5- TRUE COPY OF THE PROCEEDINGS OF THE FOURTH RESPONDENT DATED 14.2.2003.

EXT.P6- TRUE COPY OF THE G.O. (Rt) NO.497/2004/CO-OP DATED 8.9.2004 OF THE GOVERNMENT.

EXT.P7- TRUE COPY OF THE REPRESENTATION DATED 3.6.2003 SUBMITTED TO THE FIRST RESPONDENT.

EXT.P8- TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P9- TRUE COPY OF THE JUDGMENT DATED 11.2.2005 IN W.P.(C) NO.26224/2003

EXT.P10- TRUE COPY OF THE PROCEEDINGS OF THE SECOND RESPONDENT ALONG WITH THE CALCULATION STATEMENT AS WELL AS THE COVERING LETTER OF THE FIRST RESPONDENT.

(TRUE COPY)

P.A TO JUDGE

J.M.JAMES, J.

W.P.(C).Nos. 16046/2005 & 4218/2006

Dated this 22nd day of November, 2006

JUDGMENT

The writ petitioner, the Service Co-operative Bank, is before this Court praying to quash Ext.P10, an order directing the writ petitioner to remit an amount of Rs.1,08,589/- as pension fund upto 11.2.2005, ie, the date of judgment in Writ Petition No.26224/2003 dated 11.2.2005 of this Court. The proforma for calculation of pension fund was also appended with Ext.P10 order of the second respondent, the Kerala State Co-operative employees pension board, Thiruvananthapuram.

2. The third respondent, Savithri, was in the service of the writ petitioner. She was suspended on 19.3.1984 and consequently dismissed on 16.4.1985. However, she was reinstated into service on 14.5.1996. Because of the arrangement, as could be seen from Ext.P1 agreement between the third respondent and the writ petitioner, she voluntarily retired from service on

14.5.1996 itself. In Ext.P1, though the writ petitioner and the third respondent agreed that she should be reinstated with all service benefits, treating her period of suspension and termination till re-instatement as duty, because of the financial constraints of the writ petitioner, bank, she had further agreed to settle the benefits for an amount of Rs.1,00,000/-.

3. However, she had approached this Court with Ext.P2, judgment of this Court in O.P.11655/2001. This Court had directed the Registrar of the Co-operative Society to consider and fix her scale of pay towards pension, and the second respondent to calculate her pension and disburse the same. Accordingly, Ext.P5 dated 14.2.2003 was passed, notionally fixing the basic pay at Rs.445/- as on 1.12.1995 by adding increments at the rate of Rs.10/- with effect from 1.12.1983 in the scale of pay from Rs.240/- to Rs. 445/-. The pensionery benefits, eligible gratuity and all other benefits were also granted through Ext.P5. Under Ext.P6, the Government also confirmed Ext.P5 order. Thereafter, the second

respondent demanded the writ petitioner to pay the amount due to the board, so that the pension to the third respondent could be fixed and disbursed. Though Ext.P7 representation was made to the second respondent, Ext.P8 demand notice was made by the second respondent. The same was challenged by the writ petitioner, through W.P.(C).26224/2003, which was disposed of directing the second respondent to consider the representation, that was made before it by the writ petitioner, bank. The demand notice issued, was re-called. Accordingly, Ext.P10 order was passed on 4.5.2005 and the pension fund was also calculated therein, basing on various pay scales that had been fixed from time to time.

4. The point that is raised before me is that whether the second respondent, the pension board, can demand interest for the period, when the third respondent was not an employee of the writ petitioner, bank, although she had been reinstated with back wages.

5. I heard the elaborate arguments advanced by the learned counsel for the third respondent, the Standing Counsel for the second respondent and the counsel for the writ petitioner.

6. Ext.P5 fixation of the scale was done on 14.2.2003, although the reinstatement of the third respondent was only on 14.5.1996. In the facts of this case, I am of the view that the writ petitioner need not be burdened with the payment of interest, as there was no proper basic pay or scale of pay available during the above period, so that the petitioner could contribute its share towards the pension fund.

7. The counsel for the petitioner also submitted relying on Ext.P11 dated 3.6.2003 that the writ petitioner, bank, had remitted an amount of Rs.5,423/- towards pension contribution of the third respondent, with an interest of Rs.382/- for the period from 14.2.2003 to 3.6.2003. However, this calculation as well as the period mentioned by the writ petitioner through Ext.P11, is challenged by the counsel for the second

respondent.

8. After hearing all concerned and considering the facts that are placed before me, I hold that the writ petitioner, bank, is bound to make the contributions towards the pension fund of the third respondent for the entire period of her service. During the period from 19.3.1984 to 14.5.1996, she was not in the service of the bank and, therefore, the bank cannot be directed to pay interest as there was no pay drawn by her and the bank, therefore, was not bound to make any remittance. However, as she was reinstated with back wages, the writ petitioner shall remit its contribution for the entire period, but the second respondent shall be entitled to realise the interest only upto 18.3.1984 and thereafter, from 14.2.2003, the date of Ext.P5, till the last date of remittance, provided there was any default found in remittance.

9. The second respondent shall therefore, calculate the amount and ascertain whether the amount, remitted under Ext.P11 by the writ petitioner, was

correct or not.

9. W.P.(C).4218/2006 is filed by the employee, the third respondent in W.P.(C).16046/2005, praying that a direction may be issued to the pension board to re-fix the pension fixing her last pay as of Rs.445/- and also to pay arrears of pension, due to the petitioner from 15.5.1996 to 30.11.2002.

10. In the light of the facts discussed above, the pension board shall re-calculate the pension due to the employee, Savithri, fixing her last pay as Rs.445/-, and all the arrears of pension, due to the employee, shall be paid for the entire period for which the employee is entitled. The pension shall be disbursed to the petitioner at the earliest, in any case, within three months from the date of production of a copy of this judgment.

Both writ petitions are disposed of as above.

J.M.JAMES
JUDGE

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